Calendar No. 194

102D CONGRESS
1st Session

SENATE

REPORT
102–130

AMENDING THE ACT OF MAY 15, 1965, AUTHORIZING THE SECRETARY OF THE INTERIOR TO DESIGNATE THE NEZ PERCE NATIONAL HISTORICAL PARK IN THE STATE OF IDAHO, AND FOR OTHER PURPOSES

JULY 30 (legislative day, JULY 30), 1991.—Ordered to be printed

---

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 550]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 550) to amend the Act of May 15, 1965, authorizing the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, line 6, strike "1989" and insert "1990", and strike "draft" and insert "Report".
2. On page 2, beginning on line 12, strike the parenthetical phrase beginning with "(limited" and ending with "tribes)".
3. On page 2, line 20, strike "and" and insert at the end of the section "; and Hasotino Village, Idaho".
4. On page 3, line 24, strike "it is" and insert in lieu thereof, "such components are".
5. On page 4, line 5, strike "it is" and insert in lieu thereof, "such components are".

PURPOSE OF THE MEASURE

The purposes of S. 550, as ordered reported, are to amend the Nez Perce National Historical Park enabling Act to add 14 sites in Idaho, Montana, Oregon, and Washington; to increase the acquisition and authorization ceilings for the park; and to make other conforming changes.

49-010

S313-24

Background and Need

The Nez Perce National Historical Park in Idaho was established by Congress in 1965. The park was established to "facilitate protection and provide interpretation of sites in the Nez Perce country of Idaho."

In 1877, the U.S. Government was pressuring Chief Joseph and his Nez Perce tribe to abandon their homelands in northeastern Oregon and move to a Government reservation in Idaho. The ensuing U.S. war against the Nez Perce tribe marked the final time the U.S. Army and an Indian tribe engaged in hostilities.

Following a raid by some tribe members on settlers near the Salmon River in Idaho, the Army began a 5-month pursuit of Joseph and the tribe. During that time, Joseph kept the tribe (consisting of about 800 members) just ahead of the Army, on a route that went through Idaho, Wyoming and Montana in an effort to reach safety in Canada. Finally, on October 5, 1877, following a confrontation at the Bear Paw battlefield in Montana, Joseph surrendered to General Miles—just 40 miles short of the Canadian border.

The tribe was then sent into exile on a reservation in Oklahoma. In 1885, Joseph, along with the 267 remaining survivors of the tribe, was allowed to return to the Northwest, finally settling in eastern Washington on a reservation. Chief Joseph died at the reservation in 1904.

S. 550 amends the Nez Perce National Historical Park enabling legislation to broaden the focus of the park from Idaho only, to authorize the inclusion of potential additional sites in Montana, Washington, Oregon, and Wyoming.

Legislative History

S. 550 was introduced on March 5, 1991 by Senators Craig, Hatfield, Burns, Symms and Adams. Last Congress, the Committee held a hearing on, and reported similar legislation, S. 2804, which passed the Senate on October 17, 1990. The Subcommittee on Public Lands, National Parks and Forests held a hearing on S. 550 on May 21, 1991.

At the business meeting on July 17, 1991, the Committee on Energy and Natural Resources ordered S. 550, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Committee on Energy and Natural Resources, in open business session on July 17, 1991, by a unanimous vote of a quorum present, recommends that the Senate pass S. 550, if amended as described herein.

The roll call vote on reporting the measure was 20 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman [1]	
Mr. Wirth	
Mr. Conrad	
Mr. Akaka	
Mr. Fowler [1]	
Mr. Shelby [1]	
Mr. Wellstone [1]	
Mr. Wallop	
Mr. Hatfield	
Mr. Domenici [1]	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Craig	
Mr. Seymour	
Mr. Garn	

[1] Indicates voted by proxy.

Committee Amendments

During the consideration of S. 550, the Committee adopted several amendments. The first two amendments simply update the reference in the bill from the National Park Service's draft study of expansion options for the Nez Perce National Historical Park to the final version.

The third amendment deletes a provision in S. 550 that would have limited acquisition at the Old Chief Joseph's Gravesite and Cemetery in Oregon to only those lands that as of the date of enactment of this Act were owned by the United States or were held in trust by the United States for the Umatilla and Nez Perce tribes. As amended, acquisition of private lands will be permitted at this site, consistent with the requirement in section 3(a) that such lands may only be acquired with the consent of the owner. The Committee also approved two technical amendments.

The Committee understands that the Nez Perce tribe has met with representatives from the city of Joseph, Wallowa County, the National Park Service, the Forest Service, and the owners of the property located adjacent to the site. The Committee understands that these initial negotiations were productive and that an understanding was reached concerning the approximate acreage necessary to adequately preserve and interpret the site. Although S. 550 does not establish a precise boundary for the Old Chief Joseph Gravesite and Cemetery, the Committee expects that if any minor modifications to this agreement are necessary, they can be negotiated among the parties.

Congress appropriated $300,000 to the Forest Service pursuant to the fiscal year 1991 Interior and Related Agencies Appropriations Act (Public Law 101-512) to acquire private land adjacent to the Old Chief Joseph Gravesite and Cemetery. The Committee encour-

ages the Forest Service to initiate and conclude purchase negotiations as soon as possible. If the Forest Service determines that this is not possible, the Committee requests that the Forest Service prepare an analysis of the problems, with potential alternatives, and present the analysis to the Committee as soon as possible.

SECTION-BY-SECTION ANALYSIS

Section 1 amends the Nez Perce National Historical Park enabling legislation to expand the definition of the Nez Perce country from being solely within Idaho to include the States of Montana, Oregon, Washington, and Wyoming.

Section 2 amends the enabling legislation to include 14 specific sites in Idaho, Washington, Oregon and Montana as components of the park.

Section 3(a) amends the enabling legislation to provide that lands and interests in land owned by a State or political subdivision thereof may be acquired only by donation or exchange, and private lands may be purchased only with the consent of the owner.

Subsection (b) removes a limitation on the Park Service acquiring more than 1,500 acres for the park.

Subsection (c) makes a conforming amendment to the enabling legislation.

Subsection (d) adds a requirement that the Secretary consult with officials of the Nez Perce tribe to ensure the historical and cultural accuracy of the interpretation sites.

Section 4 increases the land acquisition ceiling from $630,000 to $2.13 million, and increases the development ceiling from $4.1 million to $9.3 million.

Section 5(a) amends the enabling legislation to provide that the individual and separate Federal components of the park are to be administered by the respective administrative region of the Park Service in which the component is located.

Subsection (b) provides that cooperative agreements for the State and private components of the park are to be administered by the respective administrative region of the Park Service in which the components are located.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 29, 1991.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 550, a bill to amend the Act of May 15, 1965, authorizing the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources on July 24, 1991. CBO estimates that implementation of this bill would cost the federal government up to $7.4 million for

land acquisition and development over the next five to seven years, assuming appropriation of the necessary funds. An additional $200,000–$400,000 would be spent each year to manage and operate new park facilities. The bill would not affect direct spending or receipts, so there would be no pay-as-you-go scoring under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

S. 550 would designate fourteen sites in Oregon, Idaho, Washington, and Montana as new components of the Nez Perce National Historical Park. The bill would increase the amount authorized to be appropriated for acquisition of land and other interests for this park by $1.5 million and the amount authorized for construction, restoration and improvements by $5.2 million. Further, the bill would delete existing restrictions on the amount of land that may be acquired for the park. It would also provide that lands and interests owned by state and local governments may be acquired only by donation or exchange, while private lands and interests may be acquired only on a willing seller basis.

It appears that most of the fourteen sites added by S. 550 are owned by other federal, state, local or tribal government entities and would remain within their present jurisdictions. Based on information from the National Park Service (NPS), we expect that management and interpretation of these sites would be carried out through cooperative agreements between the NPS and the relevant agencies. Similarly, resources on private land within the designated areas would most often be protected through the purchase of scenic easements. In both of these cases, interpretation would at most involve the use of exhibits at unstaffed roadside areas.

Assuming that S. 550 is implemented in this manner (and that sufficient funds are appropriated), CBO estimates that the NPS would spend the $1.5 million authorized for land acquisition over the next three years. A significant part of this amount would probably be used to acquire property near the Old Chief Joseph Gravesite in Oregon. The rest would be used to acquire small land parcels at several sites for roadside facilities and to purchase scenic easements from local landowners.

The amount and timing of development expenditures cannot be estimated as precisely and would depend on NPS priorities, planning procedures and budget constraints. Development of most of the sites would involve only minor construction costs. However, current NPS proposals include the construction of two visitor facilities at newly designated sites (at a total cost of over $5.2 million) and one at an existing park site (at a cost of over $1 million). Assuming all planned development projects can be scaled down to fit within the bill's authorization level, CBO estimates that $5.2 million would be spend over the next five to seven years. (Most of these funds would not be spent until after 1994.) If instead fewer facilities are constructed, total development costs might be less.

In addition to the above costs, the NPS would spend about $700,000 over the first three years for acquisition management, planning, research and other start-up activities as well as purchases of exhibits and equipment. The appropriation of funds for these activities is authorized under general statutes governing NPS responsibilities. Additional costs to manage, operate and maintain

the Nez Perce sites would range between $200,000 and $400,000 a year, depending on the number of visitor facilities constructed.

The enactment of this bill would have no impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 550. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 550, as ordered reported.

EXECUTIVE COMMUNICATIONS

On May 7, 1991, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 550. These reports had not been received at the time the report on S. 550 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the National Park Service at the Subcommittee hearing follows:

STATEMENT OF JERRY L. ROGERS, ASSOCIATE DIRECTOR, NATIONAL PARK SERVICE, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 550, A BILL TO AMEND THE ACT OF MAY 15, 1965, AUTHORIZING DESIGNATION OF THE NEZ PERCE NATIONAL HISTORICAL PARK IN THE STATE OF IDAHO.

May 21, 1991

Mr. Chairman, I appreciate this opportunity to provide your Subcommittee with the views of the Department of the Interior on S. 550, a bill that would authorize expansion of the Nez Perce National Historical Park.

We support passage of S. 550. We recommend, however, that the Subcommittee consider removing the provision in the bill that would limit Old Chief Joseph's Gravesite and Cemetery to that area now held in trust by the Bureau of Indian Affairs.

The Nez Perce National Historical Park was authorized by the Act of May 15, 1965. Its purpose is to protect and interpret sites "...in the Nez Perce country of Idaho that have exceptional value in commemorating the history of the Nation." The park now consists of 24 separate sites designated by the Secretary of the Interior.

S. 550 would amend the 1965 Act in several ways. It would: (1) permit designation of sites in the States of Oregon, Montana, Washington and Wyoming, as well as in Idaho; (2) specify 13 sites to be added to the park; (3) remove the acreage limitation imposed on lands acquired by purchase; (4) remove the acreage limitation imposed on designation of lands now under the administrative jurisdiction of other Federal agencies; (5) increase the

authorization for appropriations for land acquisition by $1.5 million and for development by $5.2 million; (6) add the requirement that lands owned by a State or political subdivision be acquired only by donation or exchange; (7) stipulate that private lands be purchased only on a willing seller basis; and (8 require that the Secretary consult with the Nez Perce tribe to ensure the cultural and historical accuracy of site interpretation.

Mr. Chairman, there are two main reasons why we support the expansion of Nez Perce National Historical Park. The first reason is that restricting the park to sites in Idaho has resulted in the exclusion of some very important sites associated with the Nez Perce story. In turn, our ability to present a comprehensive overview of the history and culture of the Nez Perce has been somewhat frustrated. Expanding the park to include additional sites will enable us to provide the visiting public with a much better understanding of the problems and events that culuminated in the 1877 Nez Perce war. A detailed description of each of the new sites under consideration is appended to my statement.

The second reason we support expansion is that it makes good sense to build on a partnership that has worked very well. The National Park Service owns and administers only four of the 24 sites now included in the park. The remaining 20 sites are owned by various other Federal, State, tribal, and private interests who are our "partners" in this venture. Those 20 sites are

managed as units of the park through cooperative agreements between the National Park Service and the owning/managing agency or individual.

The cooperative agreements range from the simple -- such as providing interpretive signs -- to the more complex -- such as the National Park Service providing assistance in maintaining, interpreting, and preserving historic structures, as occurs at St. Joseph's Mission and Pierce Courthouse. We have found this arrangement to be quite effective in achieving the level of protection and interpretation that is necessary. We expect the same sort of arrangements for each of the sites that have been identified in the study recently completed by the Pacific Northwest Regional Office, and that are now included in S. 550.

Mr. Chairman, I mentioned earlier in this testimony that we suggest removing the provision in S. 550 limiting the boundaries of Old Chief Joseph's Gravesite to that area which is now held in trust by the Bureau of Indian Affairs. We believe this important site should include a larger area to provide a greater degree of protection for nearby prehistoric burials, and to provide a location for small-scale visitor service facilities. This site expansion would represent a substantial portion of the estimated total acquisition cost of $1.5 million.

The $1.5 million assumes acquisition of fee interests in a total of 300 acres of land, and the acquisition of scenic easements on less than 1,500 acres. Since negotiations for the future disposition of each of the 13 sites will not take place until

after authorization, it is possible that some of the acreage we have included in the estimate will not need to be acquired. If that should occur, a lesser amount may need to be appropriated.

A portion of the $5.2 million development ceiling increase is also attributable to Old Chief Joseph's Gravesite, where an interpretive station would be needed. But the greater part of the development costs would be attributable to various interpretive exhibits, site planning, landscaping, and a visitor center at Bear's Paw.

In closing, Mr. Chairman, I would point out that the people, events, and sites represented by Nez Perce National Historical Park have played a leading role in shaping the history and development of the West, beginning with the first contact between Lewis and Clark and the Nez Perce at Wieppe prairie in 1805. The Nez Perce War of 1877 was an event that not only deeply affected its participants and their descendants for generations, but reached beyond to stir the emotions of an entire nation. We now have before us the opportunity to finally interpret the whole story of the Nez Perce, their country, and their impact on American history.

Mr. Chairman, this concludes my testimony on S. 550. I would be pleased to try to answer any questions you or other members of the Subcommittee may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 550, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 89-19

AN ACT To authorize the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the purpose of this Act to facilitate protection and provide interpretation of sites in the Nez Perce country of Idaho and in the States of Oregon, Washington, Montana, and Wyoming, that have exceptional value in commemorating the history of the Nation.

SEC. 2. To implement this purpose the Secretary of the Interior may designate as the Nez Perce National Historical Park various component sites in Federal and non-Federal ownership relating to the early Nez Perce culture, the Lewis and Clark Expedition through the area, the fur trade, missionaries, gold mining and logging, the Nez Perce war of 1877, and such other sites as he finds will depict the role of the Nez Perce country in the westward expansion of the Nation. *Sites to be so designated shall include the following sites as described in the 1990 National Park Service Report "Nez Perce National Historical Park Additions Study": Tolo Lake, Idaho; Looking Glass' 1877 Campsite, Idaho; Buffalo Eddy, Washington and Idaho; Traditional Crossing Near Doug Bar, Oregon and Idaho; Camas Meadows Battle Sites, Idaho; Joseph Canyon Viewpoint, Oregon; Old Chief Joseph's Gravesite and Cemetary, Oregon; Traditional Campsite at the Fork of the Lostine and Wallowa Rivers, Oregon; Burial Site of Chief Joseph the Younger, Washington; Nez Perce Campsites, Washington, Big Hole National Battlefield, Montana; Bear's Paw Battleground, Montana; Canyon Creek, Montana; and Hasotino Village, Idaho.*

SEC. 3. The Secretary of the Interior may acquire by donation or with donated funds such lands, or interests therein, and other property which in his judgment will further the purpose of this Act and he may purchase with appropriated funds land, or interests therein, required for the administration of the Nez Perce National Historical Park[:]. *Lands and interests therein owned by a State or local political subdivision may be acquired only by donation or exchange and private lands or interests therein may be purchased only on a willing seller basis:*

Provided, That he may purchase no more than one thousand five hundred acres in fee, and no more than one thousand five hundred acres in scenic easements. The Nez Perce Tribe's governing body, if it so desires, with the approval of the Secretary of the Interior, is authorized to sell, donate, or exchange tribal-owned lands held in trust needed to further the purpose of this Act.

SEC. 4. (a) Indian trust land may be designated by the Secretary of the Interior for inclusion in the Nez Perce National Historical Park with the concurrence of the beneficial owner. Sites in Federal ownership under the administrative jurisdiction of other Government agencies may likewise be designated by the Secretary of the Interior for inclusion in the Nez Perce National Historical Park with the concurrence of the agency having administrative responsibility therefor, but such designation shall effect no transfer of administrative control unless the administering agency consents thereto. [Not more than one thousand and five hundred acres overall shall be designated pursuant to the foregoing provisions of this subsection.] The Secretary of the Interior may cooperate with the Nez Perce Tribe or the administering agency, as the case may be, in research into the interpretation of the significance of any site so designated and in providing desirable interpretive services and facilities and other facilities required for public access to and use and enjoyment of the site and in conservation of the scenic and other resources thereof.

(b) The Secretary of the Interior may enter into cooperative agreement with the owners of property which under the provisions of this Act, may be designated for inclusion in Nez Perce National Historical Park as sites in non-Federal ownership, and he may assist in the preservation, renewal, and interpretation of the properties, provided the cooperative agreements shall contain, but not be limited to, provisions that: (1) the Secretary has right of access at all reasonable times to all public portions of the property for the purpose of conducting visitors through the property and interpreting it to the public and (2) no changes or alterations shall be made in the properties, including buildings and grounds, without the written consent of the Secretary.

SEC. 5. *(a)* When the Secretary of the Interior determines that he has acquired title to, or interest in, sufficient properties or determines that he has entered into appropriate cooperative agreements with owners of non-Federal properties, or any combination thereof including the designation of sites already in Federal ownership, he shall by publication in the Federal Register establish the Nez Perce National Historical Park and thereafter administer the Federal property under his administrative jurisdiction in accordance with the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented.

(b) The individual and separate Federal components of the Nez Perce National Historical Park shall be administered by the respective administrative region of the National Park Service in which such components are located.

(c) Cooperative agreements for the individual and separate State and private components of the Nez Perce National Historical Park shall be administered by the respective administrative region of the National Park Service in which such components are located.

SEC. 6. (a) In order to carry out the purpose of this Act the Secretary of the Interior may contract and make cooperative agreements with the [State of Idaho, its] *States of Idaho, Oregon, Washington, or Wyoming, their* political subdivisions or agencies, corporations, associations, the Nez Perce Tribe, or individuals, to protect, preserve, maintain, or operate any site, object, or property included

within the Nez Perce National Historical Park, regardless of whether title thereto is in the United States: *Provided,* That no contract or cooperative agreement shall be made or entered into which will obligate the general fund of the Treasury unless or until Congress has appropriated money for such purposes.

(b) To facilitate the interpretation of the Nez Perce country the Secretary is authorized to erect and maintain tablets or markers in accordance with the provisions contained in the Act approved August 21, 1935, entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (49 Stat. 666).

(c) In order to ensure the cultural and historical accuracy of the interpretation sites of the Nez Perce country, the Secretary shall consult with officials of the Nez Perce tribe.

SEC. 7. There are hereby authorized to be appropriated the sums of not more that [$630,000] *$2,130,000* for the acquisition of lands and interests in land and not more than [$4,100,000] *$9,300,000* for construction, restoration work, and other improvements at the Nez Perce National Historical Park under this Act.

○